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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:03

PLR-129362-08

Date:

October 22, 2008

Distributing =

Controlled =

Business =

Shareholder A =

Shareholder B =

Asset 1 =

Asset 2 =

Date 1 =

Dear :

We respond to your request dated June 30, 2008, for rulings on the Federal income tax consequences of a proposed transaction. Additional information was

provided in letters dated July 28, 2008, September 18, 2008 and October 21, 2008. The information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of §1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the transaction of the earnings and profits of any distributing corporation or controlled corporation (see §355(a)(1)(B) of the Internal Revenue Code and §1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or controlled corporation (see §355(e)(2)(A)(ii) and §1.355-7).

Distributing, which is taxed as a subchapter S corporation for Federal income tax purposes, is engaged in Business. Distributing owns Asset 1 and Asset 2. The shares of Distributing are owned equally by Shareholder A and Shareholder B.

Financial information has been received that indicates that Business has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

For what are represented to be valid business purposes, Distributing proposes the following transaction:

- (i) Distributing will contribute Asset 1 and related operating assets to Controlled in exchange for all of the outstanding stock of Controlled and assumption of related liabilities (the "Contribution").
- (ii) Distributing then will distribute all of the stock of Controlled to Shareholder B in exchange for all of Shareholder B's stock of Distributing (the "Distribution").

The following representations have been made in connection with the proposed transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

- (b) The five years of financial information submitted on behalf of Distributing is representative of its present operations, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) Following the transaction, Distributing and Controlled each will continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the Business conducted by Distributing prior to the consummation of the transaction.
- (d) The transaction is being carried out for the following corporate business purposes: (i) to resolve differences of opinion between Shareholder A and Shareholder B regarding the management of Business operations; and (ii) to allow the risks associated with Business to be managed as each Shareholder A and Shareholder B sees fit. The distribution of the stock or stock and securities, of Controlled is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (e) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (f) The transaction is not part of a plan or series of related transactions (within the meaning of §1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of §355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (g) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the transaction.
- (h) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length. Controlled may provide services to Distributing with respect to Business on Distributing's behalf. Such services will be provided at arm's length and for arm's length market-based consideration.
- (i) The fair market value of the Controlled stock and other consideration to be received by Shareholder B will be approximately equal to the fair market value of the Distributing stock surrendered by Shareholder B in the exchange.
- (j) For purposes of §355(d), immediately after the transaction, no person (determined after applying §355(d)(7)) will hold stock possessing 50

percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in §355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the transaction.

- (k) For purposes of §355(d), immediately after the transaction, no person (determined after applying §355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in §§355(d)(5) and (8)) during the five year period (determined after applying §355(d)(6)) ending on the date of the transaction or (ii) attributable to transactions on Distributing stock that was acquired by purchase (as defined in §§355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the transaction.
- (l) Immediately after the transaction (as defined in §355(g)(4)) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of §355(g)(3)).
- (m) The total fair market value of the assets transferred to Controlled in the transaction will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of §357(d)) by Controlled in the exchange, (ii) the amount of any liabilities owed to Controlled by Distribution that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under §361(a) without the recognition of gain) received by Distributing in the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
- (n) The total adjusted bases of the assets to be transferred to Controlled by Distributing in the transaction will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of §357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any property (within the meaning of §361(b)) received by Distributing from Controlled and transferred to Shareholder B pursuant to the plan of reorganization.
- (o) Effective Date 1, Distributing made an election under §1362(a) to be an S corporation (within the meaning of §1361(a)), and Distributing has

continued to be an S corporation since Date 1 (within the meaning of §1361(a)).

- (p) Immediately after the transaction, Controlled will be eligible to elect S corporation status pursuant to §1362(a), effective immediately after the transaction.
- (q) Controlled will elect to be treated as an S corporation, effective immediately after the Distribution (see §1.1361-3(a)(4)).
- (r) None of the persons holding stock, membership interests, or any equity interest in either Distributing or Controlled is a nonresident alien individual, a foreign corporation, or a trust (except for trusts meeting the requirements of §1361(c)(2)).
- (s) There is no plan or intention to revoke or otherwise terminate the S corporation election of either Distributing or Controlled.

Based solely on the information submitted and on the representations set forth above, we rule as follows:

- (1) The Contribution followed by the Distribution will constitute a reorganization within the meaning of §368(a)(1)(D). Distributing and Controlled each will be a “party to a reorganization” within the meaning of §368(b).
- (2) No gain or loss will be recognized by Distributing upon the Contribution (§§361 and 357(a)).
- (3) No gain or loss will be recognized by Controlled upon the Contribution (§1032).
- (4) Controlled’s basis in each of the assets received will equal the basis of such asset in the hands of Distributing immediately prior to the Contribution (§362(b)).
- (5) Controlled’s holding period in each of the assets received will include the period during which such asset was held by Distributing (§1223(2)).
- (6) No gain or loss will be recognized by Distributing upon the Distribution (§361(c)).

- (7) No gain or loss will be recognized by (and no amount will be includible in the income of) Shareholder B upon the receipt of Controlled stock in the Distribution in exchange for all of his Distributing stock (§355(a)(1)).
- (8) The basis of the Controlled stock in the hands of Shareholder B after the Distribution will equal the basis of the Distributing stock surrendered by Shareholder B in exchange therefor (§358(a)(1)).
- (9) The holding period of the Controlled stock received by the Shareholder B will include the holding period of the Distributing stock surrendered by the shareholder, provided such stock is held as a capital asset on the date of the Distribution (§ 1223(1)).
- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with §§312 and 1.312-10(b).
- (11) Controlled will be subject to §1374 with respect to any asset transferred in the Contribution to the same extent that Distributing is subject to §1374 with respect to such asset. For purposes of §1374, Controlled's recognition period will be reduced by the portion of Distributing's recognition period that expires prior to the Contribution (§1374(d)(8) and Ann. 86-128, 1986-51 I.R.B. 22).
- (12) Distributing's momentary ownership of the stock of Controlled, as part of the reorganization under §368(a)(1)(D), will not cause Controlled to have an ineligible shareholder for any portion of its first taxable year under §1361(b)(1)(B). If Controlled otherwise meets the requirements of a small business corporation under §1361, Controlled will be eligible to elect to be a subchapter S corporation under §1362(a) for its first taxable year.
- (13) Distributing's accumulated adjustments account immediately before the transaction will be allocated between Distributing and Controlled in a manner similar to the manner in which Distributing's earnings and profits will be allocated under §312(h) (see §§1.312-10(a) and 1.1368-2(d)(3)).

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Transaction satisfies the business purpose requirement of §1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the transaction of the earnings and profits of the distributing corporation or the controlled corporation or both (see §355(a)(1)(B) and §1.355-2(d)); or (iii) whether the Transaction

and an acquisition or acquisitions are part of a plan (or series of related transactions) under §355(e)(2)(A)(ii).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)